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Supreme Court, U.S.
FILED
NOV 22 1995
CLERK

No. 95-674

In The

Supreme Court of the United States

October Term, 1995

JAMES C. SATCHER,

Petitioner,

versus

HONDA MOTOR CO., LTD., AMERICAN HONDA MOTOR CO., INC., AND HONDA R&D CO., LTD.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether technical noncompliance with Rule 50(b) by omitting the words "judgment as a matter of law" in the style of an otherwise adequate motion made under that rule is insufficient to waive a litigant's right to judgment as a matter of law where the purposes of Rule 50(b) are satisfied.

2. Whether judgment as a matter of law on Petitioner's punitive damages claim based on Honda's failure to manufacture and sell the subject motorcycle with leg guards was appropriate where Mississippi law requires "malice," "gross negligence," or "ruthless disregard for the rights of others" and where the evidence in the record demonstrates that no motorcycles marketed to the general public are equipped with leg guards.

LISTING OF PARTIES

The following persons or entities participated in the proceedings in the United States District Court for the Southern District of Mississippi and in the United States Court of Appeals for the Fifth Circuit:

1. James C. Satcher
   Plaintiff in the District Court
   Appellee in the Court of Appeals
   Petitioner in the Supreme Court

2. Honda Motor Co., Ltd., American Honda Motor Co., Inc., and Honda R&D Co., Ltd.[1]
   Defendants in the District Court
   Appellants in the Court of Appeals
   Respondents in the Supreme Court

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[1] A listing of parent companies and nonwholly owned subsidiaries as required by Supreme Court Rules 24.2, 24.1(b), and 29.6 is attached hereto at Appendix A.

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Honda Motor Co., Ltd., American Honda Motor Co., Inc., and Honda R&D Co., Ltd. respectfully request that this Court deny James C. Satcher's petition for a writ of certiorari.

STATEMENT

In 1985, Petitioner was involved in a nearly head-on collision when he struck an oncoming Ford LTD while operating the subject Honda Nighthawk motorcycle on a two-lane highway in rural Mississippi. As a result of the collision, Petitioner's leg was traumatically amputated. Petitioner filed suit against Honda Motor Co., Ltd., American Honda Motor Co., Inc., and Honda R&D Co., Ltd. (hereinafter "Honda") in the United States District Court for the Southern District of Mississippi, Southern Division, alleging, among other things, that the subject motorcycle was defective insofar as it was not equipped with a device to protect an operator's legs in the event of a collision with an oncoming automobile.

Petitioner's case was tried before a jury, and the evidence presented at trial demonstrated that although some police motorcycles were equipped with leg protective devices used to hold lights and other accessories, no motorcycles marketed to the general public by any manufacturer were equipped with leg protective devices. The evidence also demonstrated that no professional engineering safety organization has ever recommended that motorcycles be equipped with leg protective devices, and that no government in the world has ever required that such leg protective devices be placed on motorcycles.

Petitioner's experts, Ezra and Peterson, testified that they conducted research, funded by the National Highway Transportation and Safety Administration, on motorcycle leg protective devices for approximately ten years. (Trial Tr. Vol. V, p. 15/line 20 - p. 16/line 6; Trial Tr. Vol. VI, p. 12/line 15 - p. 15/line 21.)[2] Their goal was to develop standards for lower leg protective devices, but Dr. Peterson's recommendations were not accepted by the United States government, and no federal standards were ever enacted. (Trial Tr. Vol. V, p. 50/line 20 - p. 51/line 5; Trial Tr. Vol. XIII, p. 30/lines 7-10.)

Honda's experts, Snider and Riley, testified that although lower leg protective devices have proven beneficial in some limited accident scenarios, they actually increase the potential for upper-body injuries and are not effective in a high speed impact collision with an automobile such as the one in which Petitioner was involved. (Trial Tr. Vol. XII, p. 33/lines 7-16, p. 71/lines 16-23.)

Mr. Yamamoto, a Honda employee, testified by deposition that in the course of his employment at Honda R&D Co., Ltd., he was involved in motorcycle rider protection research. (Trial Tr. Ex. D-114, p. 48/line 13 - p. 49/line 2.) In 1967, Honda conducted a variety of helmet design tests, one of which involved a motorcycle equipped with rudimentary crash bars. (Trial Tr. Ex. D-114, p. 118/line 2 - p. 119/line 16.) The test report indicated that crash bars might be beneficial, but that

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[2] The citation "Trial Tr. Vol. X, p. 1/line 1" is intended to refer to page 1, line 1 of Vol. X of the transcript of trial testimony.

much more study would be needed to confirm this possibility. Thereafter, Honda researched a variety of lower leg protective devices through JAMA (Japanese Automobile Manufacturers Association, an association of the major Japanese motor vehicle manufacturers) and IMMA (International Motorcycle Manufacturers Association, a worldwide association of motorcycle manufacturers). (Trial. Tr. Vol. V, p. 39/line 25 - p. 40/line 12; Trial Tr. Vol. XIII, p. 31/line 5 - p. 33/line 11; Trial Tr. Ex. D-114, p. 43/line 1 - p. 45/line 20; p. 49/line 19 - p. 51/line 2; p. 164, line 19 - p. 169/line 4.) The results of JAMA and IMMA's research indicated that the benefits afforded by lower leg protective devices in low-speed collisions were substantially outweighed by the increased hazards created by those same devices in collisions involving speeds in excess of thirty miles per hour.

Honda moved for a directed verdict on Petitioner's punitive damages claims both at the close of Petitioner's evidence and at the close of all the evidence, and both motions were denied by the District Court. (Trial Tr. Vol. VIII, p. 135/line 19 - p. 138/line 18; Trial Tr. Vol. XIV, p. 123/line 19 - p. 130/line 9.) The jury, acting under a "consumer expectations" charge, returned a verdict for Petitioner on both his compensatory and punitive damages claims, and the District Court entered judgment on the jury's verdict. Honda subsequently moved, pursuant to Rule 50(b), for a new trial and judgment as a matter of law, (Cert. Pet. pp. 71a-80a),[3] but the District Court denied Honda's motions, (Cert. Pet. p. 64a).

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[3] The abbreviation "Cert. Pet." refers to the Petition for Writ of Certiorari filed by James C. Satcher.

Honda perfected an appeal to the United States Court of Appeals for the Fifth Circuit, arguing in part that the District Court erred in failing to grant Honda's motion for summary judgment. The Fifth Circuit reversed and rendered the District Court's judgment, holding that because the subject motorcycle's alleged defects were "open and obvious" as a matter of law, any recovery by Petitioner was barred under Mississippi law, and the case should, therefore, never have been submitted to the jury. *Satcher v. Honda Motor Co., Ltd.*, 984 F.2d 135, 136-7, *vacated*, 993 F.2d 56 (5th Cir. 1993). (Cert. Pet. pp. 50a-55a.)

During the pendency of a motion by Petitioner seeking rehearing and reconsideration by the Fifth Circuit of its decision to vacate the District Court's judgment, the Mississippi Supreme Court handed down *Sperry-New Holland v. Prestage*, 617 So.2d 248 (Miss. 1993). The *Prestage* court clarified Mississippi substantive products liability law, pointing out that the correct test of a product's defectiveness in Mississippi is, and has been since 1987, the "risk-utility" test, as opposed to the "consumer expectations" test under which this case was tried. *Id.* at 253. The Mississippi Supreme Court specifically pointed out that federal courts sitting in diversity in Mississippi had been consistently applying the wrong law in products liability cases for many years. *Id.* at 256.

In light of the *Prestage* decision, which also pointed out that the "open and obvious" defense had been subsumed by the "risk-utility" analysis in Mississippi, the Fifth Circuit vacated its decision and remanded this case to the District Court for further proceedings. *Satcher v. Honda Motor Co., Ltd.*, 993 F.2d 56 (5th Cir. 1993). (Cert. Pet. p. 48a.) On remand, the District Court again entered

judgment on the jury's verdict in favor of Petitioner, *Satcher v. Honda Motor Co., Ltd.*, 855 F. Supp. 886, 897 (S.D. Miss. 1994) (Cert. Pet. p. 45a), and Honda again perfected an appeal to the Fifth Circuit.

A majority of the Fifth Circuit Panel hearing this case on its second appeal to that court affirmed the District Court's award of compensatory damages in favor of Petitioner. *Satcher v. Honda Motor Co., Ltd.*, 52 F.3d 1311, 1315 (5th Cir. 1995). (Cert. Pet. pp. 5a-7a.) In denying Honda's request for a new trial in light of the *Prestage* decision's sweeping change of the federal judiciary's understanding of Mississippi law, the Fifth Circuit reasoned that because Petitioner had prevailed under the "consumer expectations" test, he automatically prevailed under the "risk-utility" test as well.[4] *Id.* (Cert. Pet. p. 7a.) One member of the three-judge Panel dissented from that holding, however, noting that the majority had essentially elevated one prong of a multi-pronged test to determinative status. *Id.* at 1318-9. (Cert. Pet. pp. 16a, 17a.)

The Fifth Circuit Panel did, however, unanimously reverse the District Court's award of punitive damages

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[4] Honda has separately petitioned this Court for a writ of certiorari to review the decision of the Fifth Circuit Panel majority affirming the District Court's award of compensatory damages in favor of Petitioner and denying Honda's request for a new trial. It is Honda's position that the District Court violated *Erie* and Honda's due process rights when it refused to remand this case for a new trial despite the Mississippi Supreme Court's denouncement of the "consumer expectations" standard, the standard under which this case was tried, in *Sperry-New Holland v. Prestage.*

and grant Honda's motion for judgment as a matter of law on that issue. *Id.* at 1317-8. (Cert. Pet. pp. 13a, 16a.) In doing so, the Panel held that Honda had complied with Rule 50(b), reasoning that any deviation from the rule's requirements that may have resulted from Honda's omission of the words "judgment as a matter of law" in the style of its motion was a *de minimis* technical deviation that could be overlooked in light of the fact that the purposes underlying the rule would not be offended by that decision. *Id.* at 1315. (Cert. Pet. pp. 7a-9a.) The Fifth Circuit also held that Honda was entitled to judgment as a matter of law because there was not enough evidence in the record to support a finding by a reasonable jury that Honda, in manufacturing and marketing the subject motorcycle without leg protective devices, had acted with "malice," "gross negligence," or "ruthless disregard for the rights of others," the Mississippi punitive damages standard. *Id.* at 1317. (Cert. Pet. p. 13a.)

REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

I. The Fifth Circuit Court Of Appeals' Holding That Honda Did Not Waive Its Right To Judgment As A Matter Of Law Despite The Fact That Honda Did Not Include The Words "Judgment As A Matter Of Law" In The Style Of Its Rule 50(b) Motion Is Not In Conflict With The Decisions Of This Court Or Any Of The Other Circuit Courts Of Appeals And Is In Keeping With The Spirit Of The Federal Rules Of Civil Procedure.

This Court should refuse Petitioner's request for a writ of certiorari because the Fifth Circuit Court of

Appeals' holding that Honda complied with Federal Rule of Civil Procedure 50(b) is not in conflict with any relevant decision of this Court or any of the other federal circuit courts of appeals.

Federal Rule of Civil Procedure 50(b), which governs motions for judgment as a matter of law, specifically authorizes a movant to combine a motion for judgment as a matter of law with a motion for a new trial:

> Whenever a motion for judgment as a matter of law made at the close of all the evidence is denied . . . the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. *A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative.*

Fed. R. Civ. P. 50(b) (emphasis added). Indeed, Rule 50(c) mandates that a court faced with alternative motions for judgment as a matter of law and a new trial rule on the motion for a new trial even if the court grants the motion for judgment as a matter of law. Fed. R. Civ. P. 50(c). *See also Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 253 (1940) (holding that "[i]f alternative prayers or motions are presented . . . the trial judge should rule on the motion for judgment . . . [and] also [ ] on the motion for a new trial").

The Fifth Circuit correctly held that Honda complied with the requirements of Rule 50(b) in this case. While Honda's March 8, 1991 motion was styled simply

"Motion For New Trial," that motion's text clearly encompassed both a request for a new trial and a request for judgment as a matter of law. Specifically, Honda asserted that:

> 2. Plaintiff's claims for punitive damages should not have been submitted to the jury because there was no evidence from which a fair minded jury could have concluded that Honda acted with gross negligence or willful misconduct in designing, selling, or marketing the motorcycle purchased by Plaintiff as required by Mississippi law.
>
> * * *
>
> 4. The defects attributed to the motorcycle were conditions which were open and obvious to a casual observer, or to any ordinary consumer, and therefore, Defendants were, as a matter of law, entitled to a verdict in their favor on each of Plaintiff's causes of action.
>
> * * *
>
> G. The [Trial] Court erred in failing to grant a directed verdict and/or a peremptory instruction on the issue of punitive damages in favor of Defendants. Considering the evidence presented at trial in the light most favorable to Plaintiff, the testimony at best showed a disagreement as to whether engineering standards had progressed to the point where it could be safely said that a leg protective device would provide more protection than harm. There was no evidence offered by Plaintiff that in all situations or even in most collision situations that leg protective devices could protect the operator's extremities without causing increased risk of

> other more serious injuries than the operator would have suffered had the motorcycle not been equipped with such a device. Plaintiff presented no evidence of gross negligence or intentional misconduct on the part of the Defendants, and in the absence of such, the refusal of a directed verdict and/or peremptory instruction on the issue of punitive damages was in error.

(Cert. Pet. pp. 71a, 72a, 78a.) As the foregoing passages demonstrate, Honda merely sought, in its "Motion For New Trial," to take advantage of Rule 50(b)'s express approval of a combination motion for new trial and motion for judgment as a matter of law. The Fifth Circuit's finding that Honda effectively moved for judgment as a matter of law represents nothing more than a recognition by the Fifth Circuit that Honda could, and did, combine two concededly distinct motions in one document.

Furthermore, the Fifth Circuit correctly excused the omission of the words "judgment as a matter of law" or "judgment notwithstanding the verdict" from the caption of Honda's "Motion For New Trial." *De minimis* technical noncompliance with Rule 50(b) is properly excused where the purposes underlying that rule are nevertheless satisfied. *See, e.g., MacArthur v. University of Texas Health Center at Tyler*, 45 F.3d 890, 897 (5th Cir. 1995) (excusing the defendant's failure to move for directed verdict at the close of all the evidence where the judge had reserved ruling on such a motion at the close of the plaintiff's case and where the purposes of Rule 50(b) were not compromised); *Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc.*, 585 F.2d 821, 825 (7th Cir. 1978), *cert. denied*, 440 U.S. 930 (1979) (excusing the defendant's failure to move for directed

verdict after the presentation of the plaintiff's rebuttal evidence where the purposes behind Rule 50 were satisfied). *Contra McCann v. Texas City Refining, Inc.*, 984 F.2d 667, 672 (5th Cir. 1993) (refusing to overlook the defendant's noncompliance with Rule 50(b) where it was not *de minimis*). Rule 50(b) has two distinct purposes at its heart:

> [T]o enable the trial court to re-examine the question of evidentiary insufficiency as a matter of law if the jury returns a verdict contrary to the movant, and to alert the opposing party to the insufficiency before the case is submitted to the jury, thereby affording it an opportunity to cure any defects in proof should the motion have merit.

Bohrer v. Hanes Corp., 715 F.2d 213, 216 (5th Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984).

It is clear in this case that if the omission of the words "judgment as a matter of law" from the style of Honda's "Motion For New Trial" was error, it was a harmless, purely technical error that did not offend the objectives underlying Rule 50(b). As demonstrated above, the text of Honda's "Motion For New Trial" contained sections clearly couched in terms of a motion for judgment as a matter of law on Petitioner's punitive damages claim, thereby providing the District Court with an opportunity to review the sufficiency of the evidence on that issue subsequent to the jury's verdict in favor of Petitioner. Furthermore, Honda moved for a directed verdict on Petitioner's punitive damages claim both at the close of Petitioner's evidence and at the close of all the evidence, thereby putting Petitioner on notice of potential defects in its proof and giving Petitioner an opportunity

to cure those defects. Thus, the Fifth Circuit's assertion that "Honda's noncompliance with [Rule 50(b)] was little more than failing to style its motion correctly" and holding that Honda's "Motion For New Trial" was sufficient to preserve error under Rule 50, *Satcher*, 52 F.3d at 1315, (Cert. Pet. pp. 8a-9a), are plainly not in conflict with any relevant decision of this Court or any other circuit court of appeals. In fact, the Fifth Circuit's decision to overlook an improper style on an otherwise adequate motion is in line with previous decisions of this Court, as well as the spirit of the Federal Rules of Civil Procedure themselves. *See* Fed. R. Civ. P. 1.

In *Foman v. Davis*, 371 U.S. 178, 179 (1962), the trial court dismissed the plaintiff's complaint for failure to state a claim on which relief could be granted. The plaintiff immediately filed motions to vacate the judgment and amend her complaint, as well as a notice of appeal. *Id.* The court of appeals dismissed the plaintiff's notice of appeal as untimely in light of the plaintiff's pending motion to vacate, *id.* at 180, and when the trial court subsequently denied the plaintiff's motions to vacate and amend, the plaintiff filed a second notice of appeal, *id.* at 179. The court of appeals then dismissed the plaintiff's second notice of appeal, reasoning that there was nothing for it to review where the plaintiff had failed to specify that she was appealing the trial court's dismissal of her complaint and where there was nothing in the record concerning the circumstances surrounding the trial court's dismissal of the plaintiff's motions to vacate and amend. *Id.* at 180-1. This Court, however, refused to accept the court of appeals' narrow reading of the plaintiff's second notice of appeal:

> The defect in the second notice of appeal did not mislead or prejudice the [defendant]. With both notices of appeal before it, the Court of Appeals should have treated the appeal from the denial of the motions as an effective, although inept, attempt to appeal from the judgment sought to be vacated. Taking the two motions and the appeals papers together, [the plaintiff's] intention to seek review of both the dismissal and the denial of the motions was manifest. Not only did both parties brief and argue the merits of the earlier judgment on appeal, but [the plaintiff's] statement of points on which she intended to rely on appeal, submitted to both [the defendant] and the court pursuant to rule, similarly demonstrated the intent to challenge the dismissal.
>
> *It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."* The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action."

Id. at 181-2 (quoting *Conley v. Gibson*, 355 U.S. 41 (1957) and Fed. R. Civ. P. 1) (emphasis added).

The Fifth Circuit's excuse of Honda's exclusion of the words "judgment as a matter of law" from the style of its Rule 50(b) motion is in obvious accord with the decision of this Court in *Foman v. Davis*. Like the *Foman* plaintiff, Honda made a mere technical error when it styled its

Rule 50(b) motion "Motion For New Trial." However, just as the *Foman* plaintiff's technical error in failing to include the trial court's dismissal of her complaint as a basis for her second notice of appeal was alleviated by other manifestations of her intention to appeal on that issue, Honda's alleged technical error in misstyling its motion was alleviated by the abundance of clear indications that Honda was, in fact, seeking judgment as a matter of law. In particular, the content of the body of Honda's Rule 50(b) motion dispelled any doubts that may have been created by the title of that motion. In its "Motion For New Trial," Honda plainly contested the District Court's denial of its motions for directed verdict on Petitioner's punitive damages claim and asserted its right to judgment as a matter of law on that claim. Furthermore, Honda's counsel made Honda's intentions manifest at the hearing on Honda's Rule 50(b) motion:

> So we feel like that at least on the crashworthiness issue, if not all the others that we've mentioned in the new trial motion, we should have received summary judgment, should have received a directed verdict, should have received a peremptory instruction, *and at this point should either be granted a new trial or a JNOV.*

(Hearing, Motion For New Trial, Tr. p. 9 (emphasis added).)

Petitioner's assertion that the Fifth Circuit's holding that Honda's "Motion For New Trial" effectively preserved Honda's right to assert error concerning the punitive damages issue is in conflict with this Court's decision in *Johnson v. New York, New Haven & Hartford R.R. Co.*, 344 U.S. 48 (1952), is unfounded. In *Johnson*, the defendant's

motion only contained requests that the jury's verdict be set aside and that a new trial be granted, *id.* at 54, and this Court expressed concern that the allowance of such a motion to serve as a request for a judgment notwithstanding the verdict would punish the plaintiff for "failure to fathom the unspoken hopes of [the defendant's] counsel," *id.* at 51. In this case, however, Honda's "Motion For New Trial" clearly asserted Honda's right to judgment as a matter of law on Petitioner's punitive damage claim where the District Court erred in failing to direct a verdict in favor of Honda on that issue. Furthermore, Petitioner was not prejudiced by the style of Honda's "Motion For New Trial" and cannot claim to have been unable to "fathom the unspoken hopes" of Honda's counsel when, during the hearing on Honda's "Motion For New Trial," Honda's counsel specifically stated that he was arguing for judgment notwithstanding the verdict on behalf of Honda.

Most importantly, this case is distinguishable from *Johnson* insofar as both the District Court and the Fifth Circuit considered Honda's motion to be one for judgment as a matter of law. In *Johnson*, this Court specifically noted that neither the trial court nor the court of appeals had considered the plaintiff's motion to be a motion for judgment notwithstanding the verdict. *Johnson*, 344 U.S. at 51. In the case at bar, however, the transcript of the hearing on Honda's "Motion For New Trial" reflects that the District Court understood Honda's "Motion For New Trial" to include a request for judgment as a matter of law:

> So, what I'm going to do this afternoon on this hearing, in addition to hear the arguments that

> both sides have made, I want a little bit more information, a little bit more specific information about what is contended. *And particularly, since the defendants are making the motion for setting aside the judgment or a new trial,* primarily the questions will probably be directed more frequently to them than they will to the plaintiffs, . . .

(Hearing, Motion For New Trial, Tr. pp. 39-40 (emphasis added).) When the Fifth Circuit considered Honda's "Motion For New Trial," it too perceived Honda's request for judgment as a matter of law:

> After the verdict Honda filed a motion styled a "motion for new trial," but it not only argued for a new trial but reurged the motion for judgment, and specifically argued that a directed verdict should have been granted on [Petitioner's] claim for punitive damages.

Satcher, 52 F.3d at 1315. (Cert. Pet. p. 8a.)

The Fifth Circuit's holding that Honda did not waive its right to judgment as a matter of law by merely omitting the words "judgment as a matter of law" from the style of its Rule 50(b) motion is harmonious with the decision of this Court in *Foman v. Davis* and the spirit of the Federal Rules of Civil Procedure as expressed in Rule 1. Had the Fifth Circuit declined to consider the text of Honda's "Motion For New Trial" and focused only on the style of that motion, it would have amounted to a "slavish application" of Rule 50(b) and an embrace of "a nominalism and a rigid trial scenario as equally at variance as ambush with the spirit of [the] Federal Rules of Civil Procedure." *Riverview Investments v. Ottaway Community Improvement*, 899 F.2d 474, 477 (6th Cir.), *cert.*

denied, 498 U.S. 855 (1990). There is no reason for this Court to state the obvious by declaring that a requirement of verbal talismans in pleadings would be antithetical to the Federal Rules of Civil Procedure. This Court should, therefore, decline to review the Fifth Circuit's holding in this case and should deny Petitioner's request for a writ of certiorari.

II. The Fifth Circuit Court Of Appeals' Reversal Of The District Court's Award Of Punitive Damages In Favor Of Petitioner Was Based On The Lack Of Evidence In The Record To Support A Finding By A Reasonable Jury That Honda Was Guilty Of Punishable Conduct Under Mississippi Law, And As Such Presents No Issues Worthy Of Review By This Court.

This Court should refuse to issue a writ of certiorari to review the Fifth Circuit's decision granting Honda judgment as a matter of law on Petitioner's punitive damages claim because Petitioner has failed to demonstrate the presence of any issues worthy of review by this Court. The Fifth Circuit's decision is in harmony with the jurisprudence of other circuit courts, many of which have granted judgment as a matter of law or judgment notwithstanding the verdict in favor of defendant manufacturers in products liability actions where there was no evidence to support a jury finding that the manufacturer was guilty of the type of egregious conduct meriting punishment. Furthermore, the Fifth Circuit's decision comports with the punitive damages law of the State of Mississippi, the substantive law that is applicable to this diversity action.

In arguing that this Court should review the Fifth Circuit's reversal of his punitive damages award, Petitioner grossly mischaracterizes the Fifth Circuit's holding on this issue. Specifically, in his petition for a writ of certiorari, Petitioner states that the Fifth Circuit held that "the fact that consensus does not exist on the question of motorcycle leg protection in and of itself prevents a jury [from] finding the failure to offer leg protection to be wanton or reckless," (Cert. Pet. p. 20), and that "a manufacturer is not liable 'as a matter of law' when it can demonstrate that there is a disagreement or no consensus in the industry, and no government regulation," (Cert. Pet. p. 22). Even a cursory review of the portion of the Fifth Circuit's opinion dealing with Petitioner's punitive damages claim, however, reveals that the Fifth Circuit simply reviewed the evidence before it, applied the punitive damages law of the State of Mississippi, and held that on the record in this case, "no reasonable jury could conclude under Mississippi law that this is an 'extreme case' meriting punitive damages, or that Honda's conduct rose to [the] level of 'malice, ruthless disregard or gross negligence' required for the imposition of such damages." *Satcher*, 52 F.3d 1311, 1317. (Cert. Pet. p. 13a.)

The Fifth Circuit's comment on the scientific community's disagreement over the efficacy of motorcycle leg protective devices and the failure of any government to ever require such devices arose in the context of a comprehensive review of the evidence presented to the jury, (Cert. Pet. p. 13a), and Petitioner should not be heard to complain that it was error for the Fifth Circuit to consider that particular evidence, which is extremely relevant to the issue of whether Honda acted with "malice, ruthless

disregard, or gross negligence." *See, e.g., Dorsey v. Honda Motor Co., Ltd.*, 655 F.2d 650, 656 (1981), *modified on other grounds*, 670 F.2d 21, *cert. denied*, 459 U.S. 880 (1982) (stating that "compliance with regulatory standards may be admissible on the issue of care"); *Chrysler Corp. v. Wolmer*, 499 So.2d 823, 826 (Fla. 1986) (considering defendant manufacturer's compliance with government performance standards in holding that the plaintiff was not entitled to punitive damages).

When the Fifth Circuit's decision reversing the District Court's award of punitive damages in favor of Petitioner is appropriately characterized, it is clear that that decision was, in fact, no more than a run-of-the-mill judgment as a matter of law based on a dearth of probative evidence in the record. As such, this case presents no critical questions of unique importance that might serve to invoke the need for this Court's consideration. In essence, Petitioner is asking this Court to reweigh the evidence presented at trial and determine the correctness of the Fifth Circuit's decision that, given the evidence before the court, Honda was entitled to judgment as a matter of law because its conduct was neither "malicious," "in ruthless disregard of the rights of others," nor "grossly negligent." This Court has made it more than clear, however, that it does not sit to decide factual issues and reweigh evidence presented at trial. *See, e.g., NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. 170, 176 n.8 (1981) (dismissing writ of certiorari as improvidently granted where it presented a primarily factual question); *Rudolph v. United States*, 370 U.S. 269, 270 (1962) (dismissing writ of certiorari as improvidently granted where factual review would be of no importance to anyone

other than the litigants); *United States v. Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts.").

A correct characterization of the Fifth Circuit's decision that Honda was entitled to judgment as a matter of law also makes it clear that that decision does not contradict the jurisprudence of any of the other circuit courts of appeals. Petitioner points to his failure to find, after exhaustive research, any case law wherein a defendant manufacturer in a products liability suit is granted judgment as a matter of law because of disagreement in the scientific community and lack of governmental regulation of the subject product. (Cert. Pet. p. 22.) There is, however, a plethora of decisions granting judgment as a matter of law to a defendant manufacturer based on a holding that there is not enough evidence in the record to support a finding by a reasonable jury that the manufacturer was guilty of conduct capable of supporting a punitive damages award under the applicable substantive law, which is exactly what the Fifth Circuit did in this case. *See, e.g., La Plante v. American Honda Motor Co., Inc.*, 27 F.3d 731, 745 (1st Cir. 1994); *Burke v. Deere & Co.*, 6 F.3d 497, 512 (8th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S.Ct. 1063 (1994); *Mosser v. Fruehauf Corp.*, 940 F.2d 77, 87 (4th Cir. 1991); *Sutherland v. Elpower Corp.*, 923 F.2d 1285, 1291 (8th Cir. 1991); *Baker v. Firestone Tire & Rubber Co.*, 793 F.2d 1196, 1201 (11th Cir. 1986); *Benford v. Richards Medical Co.*, 792 F.2d 1537, 1539 (11th Cir. 1986); *Acosta v. Honda Motor Co., Ltd.*, 717 F.2d 828, 841 (3d Cir. 1983); *Meyerhoff v. Michelin Tire Corp.*, 852 F. Supp. 933, 942 (D. Kan. 1994); *Raynor v. Richardson-Merrell, Inc.*, 643 F. Supp. 238, 245 (D.D.C 1986). Indeed, Petitioner cited several such cases

for the general propositions of law contained therein. (Cert. Pet. pp. 14, 17.)

Furthermore, in reversing the District Court's award of punitive damages in favor of Petitioner and holding that Honda was entitled to judgment as a matter of law, the Fifth Circuit correctly applied the Mississippi punitive damages standard to Petitioner's claim. Mississippi law clearly disfavors punitive damages awards, allowing them to be assessed only in "extreme cases:"

> [Our holding] in no way implies any view that we wish to encourage a wholesale filing of punitive damage actions. If anything, in the present "atmosphere", the standards for award of punitive damages should be restricted – to assure that such damages are given only to . . . truly public spirited plaintiffs. We would emphasize that punitive damages are not favored and are to be allowed only with caution and within narrow limits.

Tideway Oil Programs, Inc. v. Serio, 431 So.2d 454, 460 n.1 (Miss. 1983). A plaintiff trying to recover punitive damages under Mississippi law must demonstrate behavior on the part of the defendant evidencing "some element of aggression or some coloring of insult reflecting malice, gross negligence, or ruthless disregard for the rights of others." *Illinois Cent. R.R. Co. v. White*, 610 So.2d 308, 320 (Miss. 1992). Where the plaintiff fails to demonstrate enough evidence on which a trier of fact could base a finding that the defendant is guilty of conduct warranting an award of punitive damages, the plaintiff's case should not be submitted to the jury. *People's Bank & Trust Co. v. Cermack*, 658 So.2d 1352, 1361 (Miss. 1995).

As indicated by the Fifth Circuit's synopsis of the evidence before it, it is clear that the Fifth Circuit's holding that no reasonable jury could have found that Honda acted with "malice," "gross negligence," or "ruthless disregard for the rights of others" when it manufactured and sold the subject motorcycle without leg protective devices was not in error:

> Summarizing, the jury heard evidence that (1) there is a genuine dispute in the scientific community as to whether leg guards do more harm than good, (2) no government or agency thereof has ever required them, (3) no independent testing or professional organization has ever recommended them, (4) one of the original researchers on the problem who worked with two of plaintiff's experts disagrees with them, (5) the industry as a whole categorically rejects the need for leg guards, and (6) Honda's own testing on their use reached no definitive conclusions.

Satcher, 52 F.3d at 1317. (Cert. Pet. p. 13a.) The evidence adduced at trial demonstrated that Honda, like other motorcycle manufacturers, was aware of the desired safety benefits of motorcycle leg protective devices and made a reasoned decision not to utilize such devices because their disadvantages outweigh their safety advantages in many situations. Specifically, as testified to by Honda's experts, while leg protective devices may decrease the risk of leg injuries in certain situations, they increase the risk of more serious head and chest injuries. *Id.* The decision made by Honda not to equip the subject motorcycle with leg protective devices where such devices could result in significantly greater injuries to a rider than he/she otherwise might receive in an accident

is exactly the type of reasoned decision that the law should encourage manufacturers to make and cannot be characterized, as required by Mississippi punitive damages law, as malicious, recklessly indifferent, or grossly negligent.

In *Ames v. Sears, Roebuck & Co.*, 514 A.2d 352, 353 (Conn. App. Ct. 1986), the plaintiff was injured when the blade of a riding lawnmower off of which she had fallen struck her left arm. The plaintiff sued the lawnmower manufacturer, claiming that the lawnmower was defective because it was not equipped with a deadman's control, a device that stops the rotation of a lawnmower's blades when the mower is no longer being operated. *Id.* at 354 n.4. The trial court refused to give the jury a punitive damages charge, and the plaintiff argued on appeal that the trial court's refusal was in error insofar as the evidence demonstrated that the defendant manufacturer had acted recklessly in placing the machine into the stream of commerce. *Id.* at 358-9. The applicable law of the State of Connecticut allowed punitive damages where evidence adduced at trial demonstrated a "reckless indifference to the rights of others or an intentional and wanton violation of those rights" by a defendant manufacturer. *Id.* at 359. The appellate court held that the trial court had correctly refused to instruct the jury that it could award punitive damages based on the defendant's failure to equip the subject lawnmower with a deadman's control, despite the fact that such a control was known to and obtainable by the manufacturer:

> As a general rule, punitive damages may be awarded only for outrageous conduct. The conduct must be outrageous, either because the

> defendant's acts are done with an evil motive or because they are done with "reckless indifference to the interests of others." *The defendant's failure to install a deadman's control on its lawnmower, when such devices were not universally accepted by the industry and were not required under applicable safety standards at the time the defendant's machine was distributed . . . did not rise to the level of reckless conduct.* Without the required showing of recklessness, there was no basis for the jury to consider an award of punitive damages against the defendant. . . .

Id. at 359-60 (quoting 4 Restatement (Second) of Torts § 908 cmt. b) (emphasis added); *see also Alley v. Gubser Dev. Corp.*, 785 F.2d 849 (10th Cir.), *cert. denied*, 479 U.S. 961 (1986) (holding that manufacturers were entitled to directed verdict where evidence showed that manufacturers conformed to industry standards and that there were few customer complaints); *Jeep Corp. v. Walker*, 528 So.2d 1203, 1206 (Fla. Dist. Ct. App. 1988) (holding that the defendant automotive manufacturer was entitled to a directed verdict where there was "nothing in the record to suppose that Jeep's conduct was any more reprehensible than that of . . . other manufacturers").

Just like the deadman's control in *Ames*, motorcycle leg protective devices were, at the time the subject motorcycle was manufactured, neither accepted by the industry nor required by any government safety regulations. While those two facts are not determinative of Honda's liability for punitive damages, they make it all the more obvious that the Fifth Circuit's ruling that there was no evidence in the record on which a jury could find Honda

liable for punitive damages under the rigorous Mississippi standard is correct. There is absolutely no proof in the record that Honda acted "maliciously" in failing to equip the subject motorcycle with leg protective devices, and that prong of the Mississippi punitive damages standard is clearly inapplicable to this case. Further, it cannot be said that Honda's failure to equip the subject motorcycle with leg protective devices was either "recklessly indifferent to the rights of others" or "grossly negligent." In fact, Honda's manufacture and distribution of the subject motorcycle was the result of thoughtful decision making that encompassed a concern for a motorcycle rider's overall well-being. A decision made under those circumstances, where every other motorcycle manufacturer had apparently reached the same conclusion, evidences neither recklessness nor indifference. As the Fifth Circuit correctly noted "Satcher's theory . . . was that Honda's conduct in marketing its products in the same design of every motorcycle marketed in the world to the general public was so extreme or outrageous as to justify punitive damages." *Satcher*, 52 F.3d at 1316. Honda's conduct simply cannot be characterized as the type of conduct meriting quasi-criminal punishment under Mississippi law, and the Fifth Circuit correctly reversed the District Court's award of punitive damages in favor of Petitioner and granted judgment as a matter of law in favor of Honda.

Petitioner refers to several cases involving products such as asbestos, the Dalkon shield, and silicone breast implants in a discussion of the danger created by various products and a manufacturer's knowledge of a defect for

purposes of imposing punitive damages based on reckless conduct in disregard of the safety of the public. (Cert. Pet. pp. 13-16.) Those cases are, however, inapposite to the case at bar insofar as the dangers involved in motorcycle riding are open and clear, even to Petitioner, himself, whereas products such as asbestos and silicone breast implants impose dangers which are invisible and unknown to the consumer. If the dangerous character of the product is at issue in Petitioner's arguments on punitive damages, the subject motorcycle should certainly be exempt from a claim for such damages, and the Fifth Circuit correctly reversed the punitive damages originally awarded.

Similarly, if the nature, character and amount of testing conducted by Honda is at issue in this portion of Petitioner's argument, again, the Fifth Circuit was correct in reversing the punitive damages originally awarded. The testimony in this case made it clear that the danger to a motorcycle operator's legs was extensively tested, not only independently by Honda, but by Honda together with other international motorcycle manufacturers, working cooperatively through an organization known as the International Motorcycle Manufacturers Association (IMMA). In addition, the Japanese manufacturers were also independently conducting cooperative testing of leg protective devices through an organization known as the Japanese Automobile Manufactures Association (JAMA). Honda was an active member of both JAMA and IMMA and the testimony demonstrated that Honda was a participant in the testing of leg protective devices conducted by both organizations. This testing was conducted over more than twenty (20) years. Petitioner consistently states that

Honda did no testing on leg protective devices from 1969 to the time of trial; however, this is not a proper characterization of the testimony, which specifically detailed the cooperative efforts between Honda and all the motorcycle manufacturers in the world in conducting joint testing to determine the efficacy of leg protective devices.[5]

The Fifth Circuit's reversal of the District Court's award of punitive damages in this case simply is not "certworthy." Petitioner points to this Court's ongoing review of the constitutional questions surrounding punitive damages awards and the legislature's consideration of capping such awards to suggest that the current punitive damages scheme is embattled and in danger of being destroyed. (Cert. Pet. p. 11.) However, this Court does not sit to judge the political climate of the country. There is no indication that the Fifth Circuit acted contrary to the jurisprudence of other federal circuit courts of appeals in granting Honda judgment as a matter of law, and this

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[5] Honda notes that Petitioner frequently inserts in the discussion of the punitive damage aspect of this case citations regarding the defective design of motorcycles without leg protective devices. Honda contends, however, that the issue of product defect goes to the consideration of compensatory damages. The malicious, intentional, outrageous conduct of the defendant is the determinative activity for the imposition of punitive damages. The assessment of compensatory damages under the facts of this case is the subject of a separate Petition for Writ of Certiorari presented by Honda. For purposes of the Petition at bar, the Fifth Circuit correctly found that the evidence at issue did not support the imposition of punitive damages.

Court should decline Petitioner's invitation to reweigh the evidence presented at trial.

CONCLUSION

For these reasons, Honda Motor Co., Inc., American Honda Motor Co., Ltd., and Honda R&D Co., Ltd. respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

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APPENDIX A

RULE 29.1 LIST OF SUBSIDIARY COMPANIES

HONDA MOTOR CO., LTD. SUBSIDIARIES

Japan

Honda R&D Co., Ltd.
Honda Engineering Co., Ltd.
Yutaka Giken Co., Ltd.
Zaotec, Inc.
Seikigiken Kogyo Co., Ltd.
Asama Giken Co., Ltd.
Honda Buhin Service Co., Ltd.
Denshi Giken Co., Ltd.
Honda Foundry Co., Ltd.
Honda Lock Mfg. Co., Ltd.
Honda Finance Co., Ltd.
Honda Motor Parts Service Co., Ltd.
Honda International Sales Corporation
Honda Access Corp.
Honda Parts Sales Co., Ltd.
Suzuka Circuitland Co., Ltd.
Honda Trading Corporation
Honda Leasing Corporation
Honda Sogo Tatemono Co., Ltd.
Honda Clio Shin Tokyo Co., Ltd.
Honda Racing Corp.
Honda Sun Mfg., Co., Ltd.
Honda Parking Co., Ltd.
Kobounosato Honda Co., Ltd.

North America

American Honda Motor Co., Inc.
Honda North America, Inc.
Honda of America Mfg., Inc.
Indiana Precision Technology, Inc.
American Honda Finance Corporation
Honda International Trading Corp.

Honda R&D North America, Inc.
Honda Engineering North America, Inc.
Honda Canada, Inc.
Honda de Mexico, S.A. de C.V.

Europe

Honda Austria G.m.b.H.
Honda Europe, N.V.
Honda Belgium N.V.
Honda Motor Europe Limited
Honda of the U.K. Manufacturing Limited
Honda France S.A.
Honda Deutschland G.m.b.H.
Honda R&D Europe G.m.b.H.
Honda Netherlands B.V.
Honda International Finance B.V.
Honda Italia Industrieale S.p.A.
Honda Automobile Italia, S.p.A.
Montesa Honda S.A.
Honda (Suisse) S.A.

Brazil

Honda Motor do Brasil Ltda.

Australia

Honda Australia Pty. Ltd.

New Zealand

Honda New Zealand Limited

Asia

Prospect Engine Manufacturing
Asian Honda Motor Co., Ltd.
Thai Honda Manufacturing Co., Ltd.
Honda Engine Mfg. Philippines, Inc.

Venezuela

Honda Venezuela C.A.

App. 3

HONDA NORTH AMERICA, INC. SUBSIDIARIES

United States of America

Honda North America, Inc.
American Honda Motor Co., Inc.
American Honda Finance Corp.
Honda Trading of America Corp.
Honda of America Mfg., Inc.
Honda R&D North America, Inc.
Honda Engineering North America, Inc.
Honda Power Equipment Mfg., Inc.
Honda Performance Development, Inc.
American Honda Education Corp.
Calhac
Benton Water Supply, Inc.
American Honda Foundation
KTH Parts Industries, Inc.
Bellemar Parts Industries
Findlex Corporation
New Sabina Industries
Greenville Technology Incorporated
Tomasco Mulciber
Sunbury Components Industries, Inc.
T.S. Trim
Jefferson Industries Corporation
Indiana Precision Technology, Inc.
Blanchester FCM, Inc.
Yotec
Technical Auto Parts
Jay Tech
Honda All Lock
Midwest Express
Honda Accessory
VSK

Canada

Honda Canada, Inc.
Honda of Canada Mfg., Inc. (Div. of CH)
Honda Canada Finance
F&P Mfg., Inc.
BPI Canada
Yachiyo of Ontario

Mexico

Honda de Mexico, S.A. de C.V.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JAMES C. SATCHER,	PLAINTIFF.
versus	CIVIL ACTION NO. S87-0635(P)
HONDA MOTOR CO., LTD., AMERICAN HONDA MOTOR CO., INC., AND HONDA RESEARCH AND DEVELOPMENT CO., LTD.,	DEFENDANTS.

COURT REPORTER'S TRANSCRIPT OF
DEFENDANT'S MOTION FOR A NEW TRIAL
AND PLAINTIFF'S MOTION TO TAX COSTS

BEFORE HONORABLE CHARLES W. PICKERING, SR.
UNITED STATES DISTRICT COURT JUDGE

May 20, 1991
Biloxi, Mississippi

APPEARANCES:

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* * *

[p. 9] award him such damages as Honda caused.

Now, it seems clear from the amount of the jury verdict that they obviously didn't make a reduction. The amount of damages, actual damages that were awarded were in excess of what the plaintiff's counsel asked for in closing argument.

So we know there was no reduction given and, yet, everyone who testified said that he would have received some injury. The best you can say for the plaintiff's case is that their experts, although they speculated, they said

his injuries would have been less. And there was no disagreement about him having – that he would have received less of an injury but still an injury.

And yet, the jury clearly did not discount the injury at all, probably because they were not instructed as to how to do that. And that's why we requested the enhancement instruction but it wasn't given, and that left it up to the jury to, frankly to speculate or to overlook that, and it seems clear that that's what they did do.

So we feel like that at least on the crashworthiness issue, if not all the others that we've mentioned in the new trial motion, we should have received summary judgment, should have received a directed verdict, should have received a peremptory instruction, and at this point should either be granted a new trial or a J.N.O.V.

* * *

[p. 39] December of 1990.

The Court file itself now constitutes nine volumes. The Court file, and that is the official documents that were filed with the clerk of the Court, constitutes an entire file drawer. And I might say a quite full file drawer at that, constituting the nine volumes I referred to.

The parties or some of the parties in this – one or some of the parties in this case saw fit to order from the court reporter a daily trial transcript. So we're not, as in some cases, left to the Court's recollection or to the attorney's recollection; we actually have at this level a documentation of exactly what happened in the trial. That trial transcript consists of some 16 volumes.

There are a number of issues that have been raised in this case, probably about as many issues as you can have raised in a case of 11 days. I believe it took 11 days to try this case. I think I indicated to the parties at the time I tried this that this was the first major case or extensive case that I had tried. It was not easy to sort out all of the issues at that time and still is not at the present time.

So, what I'm going to do this afternoon on this hearing, in addition to hear the arguments that both sides have made, I want a little bit more information, a little [p. 40] bit more specific information about what is contended. And particularly, since the defendants are making the motion for setting aside the judgment or a new trial, primarily the questions will probably be directed more frequently to them than they will to the plaintiffs, because at this stage they have the burden of proof. And the Court, in order to give the defendants a fair hearing on this motion, wants to make sure that the Court has everything before it that the defendants are arguing.

And by the same token, in being fair to the, to the Court and to the, to all of the litigants, the Court is entitled to know specifically what it is that is being complained of.

The Court, during the course of this, will make some tentative findings this afternoon, perhaps some tentative rulings on some of the issues. I don't think that I will rule on all of the issues this afternoon. But regardless of what tentative rulings or tentative findings are made by the Court this afternoon, there will follow a written opinion of the Court. And the written opinion of the Court will

control as to the final conclusions of the Court on all matters.

I think that counsel probably did a – even though I find to some degree both sides are still revisiting the motion for summary judgment, I perceive that both sides

* * *